IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 217/2003
(Bhabhut Mal Vs. Jaisa Ram & Anr.)

Date of Order : 11/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sandeep Mehta for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. Surendra Surana for the non-petitioner No.1.

BY THE COURT:-

This criminal misc. petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter) is directed against the order dated 31.10.2002 passed by Additional Sessions Judge (Fast Track) Sirohi (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dated 7.8.2000 passed by Chief Judicial Magistrate, Sirohi (for short 'the trial court' hereinafter) taking cognizance of the offence under Section 420 IPC, was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the trial court and

the revisional court as also the material on record.

The facts and circumstances giving rise to the instant criminal misc. petition are that the non-petitioner No.1 filed a complaint before the trial court for the offence under Sections 418 and 420 IPC, inter-alia alleging therein that the petitioner agreed to sell his shop to the non-petitioner No.1 for a sum of Rs.3,01,111/-, out of which, the non-petitioner paid a sum of Rs.2,11,111/- to the petitioner and it was agreed that balance amount of consideration i.e. Rs.90,000/- will be paid at the time of registration of the sale deed. It appears that subsequently the petitioner declined to register the sale and therefore, a suit was filed by the non-petitioner No.1 against the petitioner for specific performance of the agreement. During the pendency of the suit, the petitioner induced the non-petitioner No.1 to compromise the matter and agreed to return the amount paid by the non-petitioner No.1 along with interest i.e. Rs.3,54,146/-. However, at that time, the petitioner paid only Rs. 2,00,000/- and made the non-petitioner No.1 to believe that he would pay the remaining amount of Rs.1,54,146/-. According to the complainant non-petitioner No.1, the petitioner right from the inception had a dishonest and fraudulent intention by not paying the amount of Rs.1,54,146/- and knowing it that he had no intention to pay the remaining amount induced the non-

petitioner No.1 fraudulently and dishonestly to compromise the civil suit. During the pendency of the proceedings, the petitioner again assured the non-petitioner complainant and made him to believe that he would pay the remaining amount and therefore, fraudulently and dishonestly induced the complainant non-petitioner No.1 to compound the offence and accordingly the non-petitioner No.1 filed a compromise before the trial court on 3.6.99. The trial court accepted the compromise and acquitted the petitioner of the charges under Sections 418 and 420 IPC. Thereafter also, the petitioner did not pay the amount and it is stated that he committed the offence of cheating. On such material, the trial court took the cognizance of the offence under Section 420 IPC and issued the process against the petitioner. That order came to be challenged by the petitioner before the revisional court. By the order impugned dated 31.10.2002, the revisional court dismissed the revision filed by the petitioner. Hence this petition.

It is contended by learned counsel for the petitioner that on the very facts in the earlier complaint filed by the non-petitioner No.1, the petitioner was acquitted of the offence on being compounded by the non-petitioner No.1 and therefore, again on the same facts the petitioner cannot be prosecuted.

In G.V.Rao Vs. L.H.V. Prasad (2000) 3 SCC 693 Hon'ble Supreme Court held that Section 415 has two parts. While in the first part, the person must “dishonestly” or “fraudulently” induce the complainant to deliver any property; the second part need not necessarily relate to property. In the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. A guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, “mens rea” on the part of that person, must be established. This part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property.

In Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi 2003 SCC (Cri) 1121, Hon'ble Supreme Court held that existence of fraudulent or dishonest intention at the time of making promise or representation, is necessary.

In Abdul Fazal Siddiqui Vs. Fatehchand Hirawat and Another (1996) 6 SCC 32, Hon'ble Supreme Court held that a mere representation which is neither claimed or alleged to be dishonest or fraudulent would not attract the charge of cheating only because the complainant parts with his money on the basis there of.

In Hridaya Ranjan Pd. Verma and Ors. Vs. State of Bihar and another AIR 2000 SC 2341, Hon'ble Supreme Court held that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to

show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

In the instant case, it has not been disputed that the petitioner agreed to sell his shop to the complainant and received amount of Rs. 2,11,111/- while knowing that he has no intention to sell the shop. Thereafter when the non-petitioner No.1 filed the suit as also the criminal complaint for the offences under Sections 418 and 420 IPC, the petitioner dishonestly and fraudulently induced the non-petitioner No.1 to compromise the matter assuring the non-petitioner No.1 that he would pay agreed remaining sum of Rs.1,54,146/- and made a representation to compound the offence as well as to get the suit dismissed by withdrawal. Thus, right from the inception i.e. making representation to the non-petitioner No.1, the petitioner obviously prima-facie had fraudulent and dishonest intention by not paying the amount sought to be paid to the non-petitioner No.1 on his inducement and therefore, both the courts below, in my view, correctly found that the petitioner right from inception had a dishonest or fraudulent intention, induced the non-petitioner No.1 to file the compromise and get the suit dismissed as also the petitioner was acquitted by compromise, which he

would not have done had he not so deceived and such act has caused harm to the non-petitioner No.1 depriving him of amount of Rs. 1,54,146/- and therefore, in my view, the very essential ingredients to construe the offence of cheating are made out and the courts below were justified in taking cognizance of the offence.

It is settled law that power under Section 482 Cr.P.C. are to be exercised sparingly and consciously in exceptional cases where it is brought to the notice of the Court that non-interference would result in serious or manifest injustice or abuse of process of the Court. In my view, the case in hand is not of such nature warranting interference in the inherent jurisdiction.

In this view of the matter, I do not find any merit in the petition. The petition is therefore, dismissed.

(H.R.PANWAR),J.

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